IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 1422 of 1994

Between:

1. Pangi Potanna Dora alias Pothu Naidu (died)

   S/o. Kannayya Dora, R/o. Chilakalagadda Village,
   Anantagiri Mandal, Visakhapatnam District.

2. Pangi Gowramma, W/o. late Pangi Potanna Dora alias
   Pothu Naidu

   R/o. Chilakalagadda Village,
   Anantagiri Mandal, Visakhapatnam District.

3. Pangi Simhachalam, S/o. Pangi Potanna Dora alias
   Pothu Naidu

   R/o. Chilakalagadda Village,
   Anantagiri Mandal, Visakhapatnam District.

4. Pangi Kannaiah Dora, S/o. Pangi Potanna Dora alias
   Pothu Naidu

   R/o. Chilakalagadda Village,
   Anantagiri Mandal, Visakhapatnam District.

   (being minor rep. by his mother and natural guardian the second petitioner)

(petitioners 2 to 4 are brought on record as L.Rs of the first petitioner as per Court order dated 13.04.1995 in W.P.M.P No.3938 of 1994)

..... PETITIONERS

AND

1 The District Collector, Visakhapatnam District.
Visakhapatnam
2 The Agency Divisional Officer & Special Deputy Collector (TW)
Paderu Village, Paderu Mandal, Visakhapatnam District.
3 Special Deputy Tahsildar (TW)
Paderu Visakhapatnam District.
4 Mandal Revenue Officer,
Anantagiri Village and Mandal, Visakhapatnam District
5 Mandal Revenue Inspector
Anantagiri Village and Mandal, Visakhapatnam District

6 Mandal Deputy Surveyor
Anantagiri Village and Mandal, Visakhapatnam District
7 Champi Demudu, S/o.Ramulu
Chilakalagedda Village Anantagiri Mandal
Visakhapatnam Dist
8 Champi Bolesu, S/o.Ramulu
Chilakalagedda Village Anantagiri Mandal
Visakhapatnam Dist
9 Champi Satya Rao, S/o.Ramulu
Chilakalagedda Village Anantagiri Mandal
Visakhapatnam Dist
10 Champi Appa Rao, S/o.Yerukulu
Chilakalagedda Village Anantagiri Mandal
Visakhapatnam Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction declaring the action of the 1st respondent in directing the respondents 7 to 10 to take possession of the land in an extent of Ac.5.48 cents in S.No.61 and Ac.3.91 in S.No.62 situate in Chilakalagedda village, Anantagiri Mandal, Visakhapatnam District, Andhra Pradesh which is owned by me and the further action of respondents 5 and 6 in not giving effect to the memo bearing Ref.No.377/93 B, Dt.25/11/93 issued by the 4th respondent as arbitrary, illegal, unjust, without jurisdiction, violative of the fundamental rights guaranteed under Arts.14, 21 and the constitutional rights guaranteed under Art. 300A of the Constitution of India and also violative of the principles of natural justice and issue consequential direction to the respondents to give effect the memo bearing Ref.No.377/93B, Dt.25/11/93 issued by the 4th respondent.

Counsel for the Petitioners: MR.C.V.MOHAN REDDY

Counsel for the Respondent Nos. 1 to 6: GP FOR ASSIGNMENT

Counsel for the Respondent Nos. 7 to 10: ---

The Court made the following ORDER:

ORDER:

This writ petition is filed by the petitioner praying for issuance of writ of *mandamus* declaring the action of the first respondent in directing respondents 7 to 10 to take possession of the land in an extent of Ac.5.48 cents in Survey No.61 and Ac.3.91 cents in Survey No.62 situate in Chilakalagedda village, Anantagiri Mandal, Visakhapatnam District, as illegal and without jurisdiction and consequently sought for a direction to the respondents not to interfere with his possession and enjoyment of the suit schedule property.

According to the petitioner, he is a tribal and he purchased the property in question under a regular registered sale deed in the year 1977 from respondents 7 to 10/predecessors and since the said deed of sale, he and his family members have been in possession of the said land. However, at the instance of first respondent, respondents 7 to 10 tried to interfere with his possession without issuing any proceedings and without any order. Therefore, the petitioner has come up with the present writ petition.

During the pendency of the writ petition, the petitioner died and his Legal Representatives are brought on record.

In the affidavit filed in support of the writ petition, it was stated that earlier seventh respondent filed L.T.R.No.1546 of 1977 before the Agency Divisional Officer-second respondent, who, after conducting an enquiry having found that the petitioner was in possession of the land in pursuance of the sale deed in his favour, which is not prohibited under the Land Transfer Regulations, dismissed the petition on 20.04.1978. Similarly, another petition filed in L.T.R.No.683 of 1992 by the father of the respondents 7 to 9 for the same relief was also dismissed by proceedings dated 16.07.1993. Therefore, it is contended by the petitioner that the authorities have enquired into his title twice and on both the occasions the claims made by the third

parties i.e., respondents 7 to 10 and their predecessors, were rejected by up holding the title of the petitioner. Therefore, the impugned action of the first respondent is illegal and without jurisdiction.

A counter-affidavit has been filed on behalf of the official respondents disputing and denying the allegations made by the petitioner in the affidavit filed in support of petition, *inter alia,* stating that the petitioner was in possession of the property in question as benami on behalf of a non-tribal by name Dantuluri Appalaraju, S/o. Narasimha Raju and has occupied the land in question. In view of the occupation of the land by a non-tribal, the first respondent directed respondents 7 to 10 to take possession of the land in question. Therefore, there is no illegality or irregularity in the action of the first respondent.

Heard both sides and perused the material available on record.

Admittedly, the petitioner acquired the land in question under sale deed dated 05.08.1977. The material available on record also clearly shows that on two earlier occasions, respondents 7 to 10 and their predecessors have approached the authorities under the land transfer regulations seeking restoration of possession. On both the occasions, after conducting necessary enquiry, their petitions were dismissed in view of the sale deed obtained by the petitioner in his favour, which is not prohibited as both the petitioner and respondents 7 to 10 are tribals. However, the contention of the learned counsel for the official respondents is that the petitioner is only in possession of the land in question on behalf of the non-tribal. If the respondents are of the opinion that the petitioner is not holding the land on his behalf, it is always open to the respondents to conduct necessary enquiry and after passing appropriate order only they can take any action but not otherwise. In fact the proceedings taken twice by the authorities ended in favour of the petitioner rejecting the claims of the unofficial respondents.

Under the above circumstances and especially when a sale deed was obtained by the petitioner in his favour showing the acquisition of the lands in question, the official respondents are not entitled to take any action as impugned in the present proceedings.

Hence, the writ petition is disposed of directing the respondents not to interfere with the possession of the petitioner and his successors without there being any valid proceedings. No costs.

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S. Ananda Reddy, J

Date: 02.12.2004

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To

1 The District Collector, Visakhapatnam District.
Visakhapatnam
2 The Agency Divisional Officer & Special Deputy Collector (TW)
Paderu Village, Paderu Mandal, Visakhapatnam District.
3 The Special Deputy Tahsildar (TW)
Paderu Visakhapatnam District.
4 The Mandal Revenue Officer,
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5 The Mandal Revenue Inspector
Anantagiri Village and Mandal, Visakhapatnam District

6 The Mandal Deputy Surveyor
Anantagiri Village and Mandal, Visakhapatnam District

7 Two CCs to G.P for Assignment, High Court of A.P. Buildings, Hyderabad (OUT)

8 Two CD Copies